

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

EMMIS OPERATING COMPANY,	)	Case No. 1:06-cv-0920-LJM-WTL
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CBS RADIO INC.,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF WALTER BERGER**

Comes now the undersigned, Walter Berger, who states:

1. I am an adult competent to testify to the matters asserted herein from personal knowledge.
2. I am currently employed by CBS Radio Inc. as Executive Vice President, Chief Financial Officer.
3. I was previously employed by Emmis Operating Company as Executive Vice President, Chief Financial Officer and Treasurer from 1999 to 2005.
4. In 2002, at the suggestion of Mickey Levitan, Emmis' Executive Vice President of Human Resources, I retained Martin Klaper, a partner with the law firm of Ice Miller, to negotiate my employment contract with Emmis.
5. I wanted an attorney who would be aggressive in representing my interests. I found Mr. Klaper to be so during the course of the contract negotiations, which were extensive.
6. I was told at the time of the engagement that Ice Miller had not done much work for Emmis. Accordingly, I felt comfortable that I had an attorney-client relationship which would protect both my interests and our communications, which were numerous during the course of the negotiations.

7. In 2005, the economic terms and length of my Employment Contract were revised. Since the remaining terms of the Employment Contract negotiated by Martin Klaper on my behalf remained largely in effect, I did not retain him at this time.

8. I was never told that Ice Miller was being considered to replace Barnes & Thornburg as counsel for Emmis in this lawsuit.

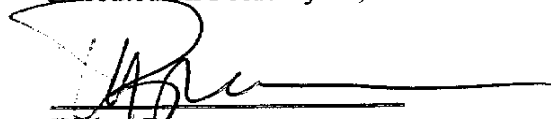
9. As soon as I found out that Ice Miller had appeared on behalf of Emmis, I notified Ice Miller of my objection and directed my current employer, CBS Radio, to do so on my behalf. I subsequently sent the letter attached hereto as Exhibit "A" to Ice Miller, demanding that they withdraw as counsel for Emmis. In response, I received the letter from Ice Miller that is attached hereto as Exhibit "B."

10. I feel strongly that there is a conflict of interest; that there is a substantial risk that information obtained by Ice Miller during the course of its prior representation of me will be used to my detriment in this lawsuit; that Emmis has interests significantly adverse to me in this lawsuit; and that Emmis will attempt to use my testimony in this lawsuit against me in the companion arbitration initiated by it pursuant to an arbitration provision contained in the Employment Contract negotiated on my behalf by Mr. Klaper.

Further affiant sayeth not.

I, Walter Berger, hereby affirm, under the penalties for perjury under the laws of the United States of America, that the foregoing representations are true.

Executed on February 16, 2007.

  
Walter Berger